IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 32794

MARY C. CURLEE,	)	
	)	**2007 Opinion No. 32**
Plaintiff-Appellant,	)	
	)	**Filed: May 24, 2007**
v.	)	
	)	**Stephen W. Kenyon, Clerk**
KOOTENAI COUNTY FIRE & RESCUE,	)	
	)	
Defendant-Respondent.	)	
	)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge.

Order granting summary judgment in favor of employer in wrongful termination action, affirmed; order denying motion for reconsideration, affirmed.

Rude, Jackson & Daugharty, Coeur d'Alene, for appellant. Mark A. Jackson argued.

Ramsden & Lyons, Coeur d'Alene, for respondent. Michael E. Ramsden argued.

PERRY, Chief Judge

Mary C. Curlee appeals from the district court's order granting a motion for summary judgment in favor of Kootenai County Fire and Rescue (KCFR). Curlee also appeals from the district court's order denying her motion to reconsider. For the reasons set forth below, we affirm.

I.
FACTS AND PROCEDURE

The following facts were taken from the affidavits in support of and in opposition to the motion for summary judgment. Beginning in 1999, Curlee held several office positions within the KCFR system. In 2002, Curlee was transferred into the administrative offices of KCFR. Two other employees in the office, an administrative assistant and a bookkeeper, were already working there when Curlee arrived. Initially, Curlee performed data entry duties and was later assigned to the front-desk receptionist position. While in her data entry position, Curlee became

displeased with what she considered to be an inordinate amount of time the administrative assistant and the bookkeeper spent on personal conversations in the office during the work day. Curlee perceived the actions as wasteful and complained to the fire chief. When complaining to the chief, Curlee also suggested that she be relieved of the receptionist duties for a more important position and that the office could be run by two, not three, employees.

After being reassigned to the receptionist position, Curlee was in more direct, daily contact with the administrative assistant and the bookkeeper. Growing more frustrated with the actions of her coworkers, Curlee eventually voiced her concerns to two fire commissioners, two lieutenants, and the deputy chief. Each of these individuals listened to her complaints. The deputy chief and one of the lieutenants informed Curlee they would discuss her concerns with the chief. Additionally, Curlee claimed that both of the lieutenants told her she should document the behavior of her coworkers that she believed to be wasteful.

Over the course of the next several months, Curlee maintained a detailed, handwritten, minute-by-minute log of the activities engaged in by her two coworkers which Curlee deemed to be wasteful. During this time period, Curlee again expressed her frustration to the chief. The chief, in response, expressed a desire to ease the tension in the office between his employees and have all of them work together. Additionally, one of the fire commissioners mentioned to Curlee that he and another commissioner were "working on" Curlee's concerns. Curlee did not discuss or disclose the contents of her log during these conversations or at any other time to any employee of KCFR.

Approximately seven months after Curlee began keeping her log, the administrative assistant inadvertently discovered Curlee's log when she was attending the front desk during Curlee's lunch break. The administrative assistant showed the log to the bookkeeper. Both women noticed that, within the log, Curlee had frequently referred to her coworkers as "Muffy" and "Buffy" rather than by their names. Curlee's coworkers made photocopies of the log and submitted them to the chief. Both women were angry that Curlee had been recording their office activities and felt that being referred to as "Muffy" and "Buffy" was derogatory and insulting. The chief agreed to speak with Curlee about the log.

The chief, accompanied by the deputy chief, spoke with Curlee about the log. When asking her what she meant to accomplish by keeping the log, Curlee responded that everyone in the office wasted too much time and she wanted to show how much. Curlee also informed the

chief that she could document anything she wanted to. The chief informed her that her coworkers were upset and insulted by the derogatory names she had used and that all offices had wasted time. The chief advised Curlee that she was not trying to get along with the others and that her behavior had made the already-existing tension in the office worse. He indicated that he was trying to build a team, and her actions were detrimental to the team. Curlee advised the chief that she and the two coworkers would never be a team. The chief gave Curlee the remainder of the day off as paid leave and asked her to go home and develop a solution to ease the tension in the workplace.

Curlee returned to work the next day. The chief asked her if she had thought about the problem and what they might do about it. Curlee responded that she did not know what to do, that she would not apologize, and that she had done nothing wrong. When the chief discussed with Curlee the importance of not creating dissention in the office and working together, Curlee responded that it was her coworkers who found the log and gave it to the chief. Curlee reiterated that she would not apologize and would never be able to have a good working relationship with her two coworkers. Because Curlee refused to help develop a solution to ease the office tension, her employment was terminated.

Curlee filed suit against KCFR. Curlee alleged that she was wrongly terminated in violation of I.C. § 6-2104 for documenting a waste of public funds and manpower. KCFR answered Curlee's complaint, denied the allegations, and moved for summary judgment. KCFR also moved to strike an affidavit, submitted by Curlee, from an employee who had worked with Curlee's two coworkers previous to her transfer into the administrative office.[1] The district court granted the motion and did not utilize the affidavit in considering KCFR's motion for summary judgment. Curlee, at the hearing on the motion for summary judgment, asserted her termination was an adverse action in violation of the Idaho Protection of Public Employees Act--specifically I.C. §§ 6-2104(1)(a) and 6-2104(2). The district court granted KCFR's motion for summary judgment. Curlee then filed a motion to reconsider, which the district court denied. Curlee appeals.

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[1] The district court also granted KCFR's motion to strike four sentences from Curlee's affidavit because they were impermissibly conclusory. On appeal, Curlee does not challenge the district court's striking of these four sentences.

II.
ANALYSIS

On appeal, Curlee alleges the district court erred in striking the supplemental affidavit of the former officer worker. Curlee also argues the district court erred in granting KCFR's motion for summary judgment denying her motion for reconsideration.

A. Striking of Affidavit

The question of admissibility of affidavits under Idaho Rule of Civil Procedure 56(e) is a threshold question to be analyzed before applying the liberal construction and reasonable inferences rules required when reviewing motions for summary judgment. *Shane v. Blair,* 139 Idaho 126, 128, 75 P.3d 180, 182 (2003). The trial court must look at the affidavit or deposition testimony and determine whether it alleges facts, which if taken as true, would render the testimony admissible. *Id.; Dulaney v. St. Alphonsus Reg. Med. Ctr.*, 137 Idaho 160, 163, 45 P.3d 816, 819 (2002). When reviewing the trial court's evidentiary rulings, this Court applies an abuse of discretion standard. *Shane,* 139 Idaho at 128, 75 P.3d at 182*; Dulaney,* 137 Idaho at 163-64, 45 P.3d at 819-20. When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the court reached its decision by an exercise of reason. *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

In opposition to KCFR's motion for summary judgment, Curlee submitted an affidavit from S.J. a former employee at the KCFR administrative offices. S.J. had worked at the offices two years prior to Curlee's transfer. S.J. had also been a coworker with the administrative assistant that Curlee would later complain of. S.J.'s affidavit alleged that the administrative assistant spent a great deal of time engaged in personal conversations during the work day. The district court granted the motion to strike on the grounds that S.J.'s recollections of her experiences with the administrative assistant were not relevant to the summary judgment issue. We agree.

Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. I.R.E. 401. Evidence which is not relevant is not admissible. I.R.E. 402.

What S.J. witnessed in the office two years prior to Curlee's arrival had no bearing on whether Curlee's termination was because she documented a waste of funds and manpower. S.J. also did not observe the conduct recorded in Curlee's log nor the conversations leading to her termination. Consequently, her affidavit was not relevant to whether Curlee was terminated because of her documentation or whether the documented conduct actually constituted a waste of public funds or manpower. Therefore, even if the facts alleged in S.J.'s affidavit were assumed to be true, they would not be admissible. The district court acted consistently with the applicable legal standards and reached its decision through an exercise of reason. Accordingly, the district court did not abuse its discretion in striking the affidavit from the summary judgment proceedings.

B. Motion for Summary Judgment

Initially, we note that summary judgment under I.R.C.P. 56(c) is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. On appeal, we exercise free review in determining whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. *Edwards v. Conchemco, Inc.*, 111 Idaho 851, 852, 727 P.2d 1279, 1280 (Ct. App. 1986). When assessing a motion for summary judgment, all controverted facts are to be liberally construed in favor of the nonmoving party. Furthermore, the trial court must draw all reasonable inferences in favor of the party resisting the motion. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991); *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, 156 (Ct. App. 1994).

The party moving for summary judgment initially carries the burden to establish that there is no genuine issue of material fact and that he or she is entitled to judgment as a matter of law. *Eliopulos v. Knox*, 123 Idaho 400, 404, 848 P.2d 984, 988 (Ct. App. 1992). The burden may be met by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial. *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994). Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking. *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000). Once such an absence of evidence has been established, the burden then shifts to the party opposing the motion to show, via further

depositions, discovery responses or affidavits, that there is indeed a genuine issue for trial or to offer a valid justification for the failure to do so under I.R.C.P. 56(f). *Sanders*, 125 Idaho at 874, 876 P.2d at 156.

The United States Supreme Court, in interpreting Federal Rule of Civil Procedure 56(c), which is identical in all relevant aspects to I.R.C.P. 56(c), stated:

> In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) (citations omitted). The language and reasoning of *Celotex* has been adopted in Idaho. *Dunnick*, 126 Idaho at 312, 882 P.2d at 479.

The Idaho Protection of Public Employees Act, also referred to as the "Whistleblower Act," was passed by the legislature with the intent of providing a cause of action for public employees who suffer adverse action from their employer as a result of reporting waste and violations of a law, rule or regulation. *Malonee v. State*, 139 Idaho 615, 619, 84 P.3d 551, 555 (2004); *see also* I.C. § 6-2101. For a public employee to prevail in an action brought under either I.C. § 6-2104(a)(1) or I.C. § 6-2104(2), he or she must "establish, by a preponderance of the evidence, that the employee has suffered an adverse action because the employee, or a person acting on his behalf engaged or intended to engage in an activity protected under section 6-2104." I.C. § 6-2105(4).

This Court has not previously had an occasion to review claims brought under the Protection of Public Employees Act. We now hold that to establish a prima facie case under the Protection of Public Employees Act, a public employee must demonstrate he or she engaged or intended to engage in activity protected by the statute, he or she suffered an adverse employment action, and there is a causal connection between the protected activity and the employer's adverse action. *See* I.C. §§ 6-2101; 6-2105(4); *see also Stegall v. Citadel Broad. Co.*, 350 F.3d 1061, 1075 (9th Cir. 2003); *Yartzoff v. Thomas*, 809 F.2d 1371, 1376 (9th Cir. 1987); *Gee v.*

Minnesota State Colls. and Univs., 700 N.W.2d 548, 555 (Minn. App. 2005); *Wilmot v. Kaiser Aluminum and Chem. Corp.*, 821 P.2d 18, 28-29 (Wash. 1991).

On appeal, Curlee argues she has established a prima face case that she was discharged in violation of the Idaho Whistleblower Act for engaging in activities protected by that statute--participating in an investigation and communicating a waste of public funds. Furthermore, during oral argument, Curlee also asserted that her termination had the same effect as if KCFR had violated another provision of the statute--specifically, implementing an unreasonable restriction on her ability to document waste.

There is no dispute that Curlee was a public employee or that she suffered an adverse employment action. However, the district court granted the motion for summary judgment on the grounds that Curlee failed to establish a causal connection between the documentation of her coworker's activities and her termination. On appeal, KCFR argues that summary judgment is appropriate because Curlee's affidavit fails to make a sufficient showing that she participated in activities protected under the statute, which is an essential element of her claim.

An appellate court may affirm a lower court's decision on a legal theory different from the one applied by that court. *Matter of Estate of Bagley*, 117 Idaho 1091, 1093, 793 P.2d 1263, 1265 (Ct. App. 1990). A grant of summary judgment should be affirmed if proper on any ground. *Richard B. Smith Real Estate, Inc. v. Knudson*, 107 Idaho 597, 599, 691 P.2d 1212, 1214 (1984). Therefore, while the district court did not focus its analysis on whether Curlee's activities were protected under the statute, we may consider that legal question on appeal.

1. Participation in an investigation

Curlee argues she was participating in an investigation of the wasteful behavior of her coworkers. Idaho Code Section 6-2104(2) provides that a public "employer may not take adverse action against an employee because an employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review." The only evidence presented in Curlee's affidavit to support this claim is Curlee's assertion that two fire lieutenants informed her that she should document the allegedly wasteful activities of her coworkers.

The interpretation of a statute is an issue of law over which we exercise free review. *Zener v. Velde*, 135 Idaho 352, 355, 17 P.3d 296, 299 (Ct. App. 2000). When interpreting a statute, we will construe the statute as a whole to give effect to the legislative intent. *George W.*

Watkins Family v. Messenger, 118 Idaho 537, 539-40, 797 P.2d 1385, 1387-88 (1990); *Zener*, 135 Idaho at 355, 17 P.3d at 299. The plain meaning of a statute will prevail unless clearly expressed legislative intent is contrary or unless plain meaning leads to absurd results. *Watkins Family*, 118 Idaho at 540, 797 P.2d at 1388; *Zener*, 135 Idaho at 355, 17 P.3d at 299.

The term "investigation" is not defined within the statute. Thus, we interpret it in accordance with its plain meaning as construed with the statute as a whole. An investigation, in the context of I.C. § 6-2104(2), is intended to mean some relatively formal action as it is included within a list of other formal activities such as a "hearing, court proceeding, legislative or other inquiry, or other form of administrative review." Assuming the facts in Curlee's affidavit are true, they do not create a reasonable inference that there was any formal or semi-formal investigation being conducted by her employer or any outside agency. Instead, as KCFR correctly argues on appeal, the suggestion to document the activities of her coworkers can only be viewed as a response to Curlee's complaints, not an invitation or order to participate in a formal investigation of her coworkers instigated by her employer. Therefore, there is no genuine issue of material fact because Curlee failed to make a showing sufficient to establish the existence of the essential element of engaging in the protected activity of participating in an investigation.

2. Communication of waste

Curlee also argues the documentation of the activities of her coworkers was a communication, made in good faith, of a waste of public funds and manpower and that she suffered termination as a result of engaging in that protected communication. KCFR argues that, while the documentation was written, there was no evidence that Curlee prepared the documentation as a written report or intended to do so. Idaho Code Section 6-2104(1)(a) specifically provides:

> An employer may not take adverse action against an employee because the employee, or a person authorized to act on behalf of the employee, communicates in good faith the existence of any waste of public funds, property or manpower, or a violation or suspected violation of a law, rule or regulation adopted under the law of this state, a political subdivision of this state or the United States. Such communication shall be made at a time and in a manner which gives the employer reasonable opportunity to correct the waste or violation.

We need make no determination as to what qualifies as "waste" in the day-to-day activities of public employees as the determinative issue before us is whether Curlee's act of

privately documenting her coworker's behavior is an activity protected under I.C. § 6-2104(1)(a). The statute defines "communicate" as "a verbal or written report." I.C. § 6-2103(2). Idaho Code Section 6-2105(4) requires that the plaintiff demonstrate that an employee engaged or *intended to engage* in an activity protected under Section 6-2104 as an essential element of the prima facie case.

The log, in which Curlee documented her coworker's activities, was never delivered or reported to any of Curlee's superiors and, instead, was inadvertently discovered by her co-workers. Moreover, nowhere in her affidavit does Curlee indicate she ever intended to deliver the contents of her documentation to her supervisor, or anyone else of authority within KCFR, as a verbal or written report. On the contrary, Curlee's affidavit explicitly states that these were her own notes and were always either hidden at her workstation or in her purse. Furthermore, according to her affidavit, Curlee argued that any office dispute caused by the log was the fault of her coworkers as it was they who had removed the log from her desk and submitted copies of it to the chief. The evidence presented to the district court indicates Curlee's log was a private document.

While Curlee's affidavit claims that the documentation was part of a communication of waste, her log was never utilized as a part of a verbal or written report. Curlee provided no evidence that she ever intended to use her log as part of any verbal or written report. Indeed, Curlee's affidavit indicates she considered the log to be her own private notes. We conclude that the documentation, inadvertently discovered by Curlee's coworkers, was not a communication, as defined by the statute, nor is there any evidence that it was intended to be a communication at some later date. Therefore, there is no genuine issue of material fact as to this issue because Curlee failed to establish that her documentation was an activity protected under I.C. § 6-2104(1)(a).

3. Restrictions on documentation

Finally, Curlee contends that her termination was the equivalent of KCFR implementing an unreasonable restriction on her ability to document waste. Idaho Code Section 6-2104(4) provides that an "employer may not implement rules or policies that unreasonably restrict an employee's ability to document the existence of any waste of public funds, property or manpower, or a violation, or suspected violation of any laws, rules or regulations." *See Mallonee,* 139 Idaho at 620, 84 P.3d at 556. We have already established that the plain meaning

of a statute will prevail unless clearly expressed legislative intent is contrary or unless plain meaning leads to absurd results. *Watkins Family*, 118 Idaho at 540, 797 P.2d at 1388; *Zener*, 135 Idaho at 355, 17 P.3d at 299.

In considering the plain meaning of I.C. § 6-2104(4), we determine that in order to raise a claim under this section the employee must first establish that the employer actively implemented a rule or policy, applying to some or all employees, which by its terms violates the provisions of I.C. § 6-2104(4). Curlee provides no evidence that KCFR implemented any rule or policy that interfered with her ability to document waste. Furthermore, the statute does not prohibit any "equivalent" action; the employer must implement an active rule or policy in order to be potentially in violation of I.C. § 6-2104(4). Therefore, there is no genuine issue of material fact as to this issue as Curlee has presented no evidence that KCFR implemented any rule or policy restricting her ability to record any waste of funds or manpower.

C. Motion to Reconsider

A denial of an I.R.C.P. 60(b) motion to reconsider is reviewed for an abuse of discretion. *Alderson v. Bonner*, 142 Idaho 733, 743, 132 P.3d 1261, 1271 (Ct. App. 2006). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the court reached its decision by an exercise of reason. *Sun Valley*, 119 Idaho at 94, 803 P.2d at 1000.

On appeal, Curlee argues that at the motion for reconsideration hearing the district court admitted that KCFR's reason for firing may have been pretextual. This is incorrect. In announcing its decision to deny the motion to reconsider, the district court suggested that, under a different set of facts, KCFR's reasons for terminating Curlee may have been pretextual. However, those were not the facts presented to the district court. The district court concluded, as it did when granting the motion for summary judgment, that there was no causal nexus between her documentation of waste and her termination for refusal to assist her supervisor in developing a solution to ease the tension between her and her coworkers.

Therefore, the district court did not abuse its discretion in denying the motion for reconsideration as it recognized this as a discretionary issue, acted consistently with applicable

legal standards, and reached its decision through an exercise of reason. Furthermore, upon review, we conclude Curlee failed to demonstrate she engaged in any activity protected by the Idaho Whistleblower Act. Accordingly, we affirm the district court's order denying Curlee's motion to reconsider.

III.
CONCLUSION

The facts alleged in S.J's affidavit, even if assumed true, were not admissible and the district court did not err in striking the affidavit prior to the summary judgment proceedings. Curlee's affidavit failed to provide evidence that she was participating in an investigation or that her private log, which documented the allegedly wasteful activities of her coworkers, was either a communication or was ever intended to be part of a communication, as defined by the statute. Consequently, Curlee has not established a prima face case that she was discharged in violation of the Idaho Whistleblower Act as she has not presented evidence that she was engaged in any protected activity at the time of her termination. Furthermore, Curlee's affidavit presented no evidence that KCFR implemented any rule or policy unreasonably restricting her ability to document waste of public funds or manpower in violation of I.C. § 6-2104(4). Therefore, the district court did not abuse its discretion in granting summary judgment. Accordingly, the district court's order granting summary judgment in favor of KCFR is affirmed. Neither party has requested attorney fees. Costs are awarded to KCFR.

Judge Pro Tem WALTERS, **CONCURS.**

Judge LANSING, **DISSENTING**

I join in Part II(A) of the majority opinion, but I respectfully disagree with the analysis in Part II(B). In my view, the majority's interpretation of I.C. § 6-2104 is too narrow and creates anomalies in application of the statute that could not comport with legislative intent. I also conclude that the majority's approach glosses over genuine factual issues that should not be resolved through summary judgment.

First, the majority concludes that the provision of I.C. § 6-2104(2) prohibiting adverse action against an employee who participates in an "investigation" or "inquiry," applies to only a formal or semi-formal investigation being conducted by the employer or an outside agency, and not to an investigation initiated by the employee herself. This interpretation leads to the anomaly that while an employee may safely participate in a formal investigation once it has been initiated

by someone else, the employee may be discharged or otherwise punished for undertaking an informal personal investigation that could be necessary in order to provoke a formal inquiry into waste, corruption, or other employer misconduct. Surely it is not the legislative intent that an employer, while prohibited from punishing an employee's participation in a formal investigation, nevertheless may penalize an employee's justified efforts to prompt a formal investigation. That this was not the intent is made abundantly clear through subsection (4) of the same statute which specifies that "[a]n employer may not implement rules or policies that unreasonably restrict an employee's ability to document the existence of any waste of public funds, property or manpower, or a violation, or suspected violation, of any laws, rules or regulations." According to the majority's logic, even though this subsection precludes rules or policies that restrict an employee's documentation of waste, an employee may be terminated for doing so because firing an employee is not the same as adopting a rule or policy. In my view, section 6-2104, reasonably interpreted, protects employees against adverse employment action for personally investigating or documenting misconduct of the type identified in subsections 1(a) and (4) of the statute.

With the statute thus interpreted, the question remains whether the evidence presented by Mary Curlee is sufficient to raise a genuine factual issue as to whether the statute was violated when she was discharged. In my view, such factual issues have been raised. Curlee presented evidence from which a jury reasonably could find that she was terminated for gathering and documenting information on the waste of public funds or manpower, in violation of I.C. § 6-2104(2) and (4). A jury also might find that she compiled the information with the intent of ultimately delivering it to the lieutenants who allegedly told her to document her co-workers wasteful behavior.

Although KCFR presented evidence that Curlee was not discharged for compiling the documentation but for refusing to work cooperatively with her co-workers, that evidence is hardly conclusive for summary judgment purposes. First, there is a very close temporal proximity between the discovery of Curlee's log and the adverse employment action. She was sent home on the day of the discovery and was discharged the next day, circumstances that permit an inference that she was discharged for documenting the alleged waste of manpower. Second, KCFR's explanation could be viewed as a termination for Curlee's refusal to apologize to her co-workers for undertaking activity that is protected by I.C. § 6-2104. I fail to see how

this statute could be viewed as allowing such action against an employee. Of course, the evidence could also support a finding that Curlee was not discharged for keeping her log but for being an office troublemaker who refused to work productively with her co-workers. That, however, is a factual issue for resolution by a jury, not by a court on summary judgment.

I would therefore reverse the summary judgment order and remand this case for trial.